BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	DOCKET FILE COPY ORIGINAL
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended;	)	
	)	CC Docket No. 96-149
and	)	
	)	
Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area	)	

COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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August 15, 1996

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SUMMARY

TIA urges the Commission, in implementing the structural separation and non-discrimination provisions of Section 272, to make every effort to see that its rules effectively address the full range of risks to competition in the area of manufacturing. TIA believes that the potential risks of cross-subsidy and discrimination in favor of BOC-affiliated manufacturers in procurement, network design, standards-setting, and access to network-related information are real and substantial, given the current, immature state of competition in the BOCs' local exchange markets. Effective implementation and enforcement of the competitive safeguards embodied in Section 272 and other relevant sections of the Act is therefore essential, in order to ensure that the benefits of a fully competitive equipment marketplace are preserved.

TIA's position on specific issues addressed in the Commission's Notice is as follows:

- TIA agrees with the Commission's tentative conclusion that the BOC manufacturing activities addressed in Section 272 are not within the scope of Section 2(b) of the Communications Act, and that because such activities cannot be segregated into inter and intrastate portions, any inconsistent state regulation should be preempted.

- TIA agrees that a BOC may conduct manufacturing activities, interLATA telecommunications services, and interLATA information services in a single separate affiliate, provided that the requirements imposed on all such activities are met.

- TIA believes that Section 271(f) does not preclude application of the Section 272 safeguards to previously-

authorized activities, at the end of the one-year transition period provided in Section 272(h).

- To the extent that a single affiliate may be employed for manufacturing and other activities, establishment of a consistent set of rules would appear generally appropriate. However, in implementing the Section 272(b) structural separation requirements, the Commission should ensure that competitive concerns in the manufacturing area are adequately addressed.

- TIA concurs in the Commission's tentative conclusion that the "independent operation" provision in Section 272(b)(1) has a meaning that extends beyond the specific requirements of Section 272(b)(2)-(5). In order to ensure operational independence and the protection of competition and ratepayer interests, BOC affiliates that engage in manufacturing should be required to maintain separate facilities, and conduct marketing, administrative, research and development, and other operational functions on an independent basis, separate and apart from their affiliated BOCs.

- TIA agrees with the Commission's tentative conclusion that Section 272(b)(3) prohibits the sharing of all "in-house" functions. TIA believes that this requirement, together with the "independent operation" provision of Section 272(b)(1), requires the use of separate "outside" services as well.

- TIA endorses the Commission's tentative conclusion that a BOC may not co-sign a contract to enable the separate affiliate to obtain credit. TIA further believes that Section 272(b)(1) and (b)(4) should be construed to prohibit any and all arrangements which would result in a BOC having any responsibility, directly or indirectly, for the financial obligations of its separate affiliate.

- TIA believes that the "arm's length" provision of Section 272(b)(5) requires the establishment of procedures to ensure that all transactions between the BOC and its separate affiliate are auditable. In addition, this provision serves to underscore the need for strong, comprehensive rules implementing the other Section 272 structural separation and non-discrimination requirements.

- TIA urges the Commission, in implementing the non-discrimination provisions of Section 272(c)(1), to define "goods" and "services" to include, at a minimum, all types of telecommunications equipment, customer premises

equipment, and related equipment, software, and services. To ensure that the requirements of Section 272(c)(1) are effectively enforced, TIA further urges the Commission to consider adoption of an appropriate classification scheme which identifies discrete categories of products and related services procured by the BOCs.

- TIA agrees with the Commission's tentative conclusion that Section 272(a) bars a BOC from transferring its local exchange operations to another affiliate as a means to avoid the non-discrimination requirements of Section 272.

- TIA believes that Congress intended to establish a standard for nondiscrimination under Section 272(c)(1) that is stricter than that embodied in Section 202, and agrees with the Commission's conclusion that under the Section 272 standard, BOCs must treat all other entities in the same manner as they treat their affiliates.

- TIA believes that under Section 272(c)(1) requires the BOCs to provide all manufacturers with access to information relating to the manufacture or sale of equipment for use in or connection to the BOCs' networks in a non-discriminatory manner, i.e., at the same time and on the same terms and conditions.

- TIA urges that all BOCs be required to establish specific procedures to ensure non-discrimination in their procurement of "goods" and "services." These procedures should include the specific standards to be used in making procurement decisions. BOC procedures (and any changes thereto) should be submitted for Commission review and approval, following the receipt of comments from vendors and other interested parties.

- TIA believes that the BOCs should be strongly encouraged, if not required, to participate in the activities of accredited standard-setting groups, in establishing standards which affect the manufacture of equipment designed for use in or connection to the BOCs' networks. At a minimum, in developing technical standards for the operation of their networks and the interconnection of products and services thereto, as well as the generic specifications for products that they seek to procure, the BOCs should be required to establish and follow procedures that are open, transparent and non-discriminatory.

- TIA agrees with the Commission that the language of Section 272(e)(1) should be construed in a manner which ensures that

any "unaffiliated entity" seeking to purchase service from a BOC, including equipment vendors, will be treated in a non-discriminatory manner.

- TIA urges the Commission to ensure that there are mechanisms in place to facilitate enforcement of the manufacturing-related safeguards established pursuant to Section 272 and Section 273 of the Act. In this regard, each BOC should be required to provide procurement reports to the Commission on a regular basis, in an approved format, detailing the BOC's level of purchases from affiliated and non-affiliated suppliers in appropriately-disaggregated product categories.

- In addition, the Commission should take steps to ensure that it has access to sufficient transaction-specific data to ascertain whether a BOC has complied with the non-discrimination requirements of Section 272(c)(1) and other relevant provisions. Appropriate record retention requirements should be put in place in order to ensure that the information necessary to investigate complaints and to conduct audits of BOC procurement activities is preserved.

- In enforcing the provisions of Section 272 and 273, as they relate to BOC manufacturing, the Commission should make full use of its existing authority under Title II of the Communications Act, as well as the new authority granted under Sections 273(f) and (g) of the Act.

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COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association ("TIA"), by its attorneys, hereby submits its comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding,[1] in which the Commission will establish rules to implement the separate affiliate and non-discrimination requirements of Section 272 of the Communications Act, as amended.[2]

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1 Notice of Proposed Rulemaking, In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, FCC 96-308 (released July 18, 1996).

2 47 U.S.C. § 272.

I. INTRODUCTION [NPRM Section I.A.-I.B.; Paragraphs 1-14]

TIA is a national trade association whose membership includes over 500 manufacturers and suppliers of all types of telecommunications equipment, customer premises equipment ("CPE"), and related products and services. TIA's members are located throughout the United States, and collectively provide the bulk of the physical plant and associated products and services used to support and improve our domestic telecommunications infrastructure. In addition, TIA's member firms have enjoyed increasing success in marketing equipment and related services in other developed and developing nations around the world, thereby contributing to the growing U.S. trade surplus in sales of telecommunications equipment.[3]

Implementation of the AT&T Consent Decree, the so-called Modification of Final Judgment (MFJ),[4] had a truly profound and overwhelmingly positive effect on the telecommunications equipment industry in the United States.

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[3] A review of the Commerce Department's annual trade figures reveals that since the AT&T Consent Decree was implemented, the U.S. balance of trade in telecommunications equipment has improved dramatically, moving from a $830 million deficit in 1984 to a $3.97 billion surplus in 1995. The rapid industry growth which has occurred during this period is expected to continue, with annual factory shipments from domestic firms projected to increase from $63.2 billion in 1995 to almost $100 billion by 1997. See The Economic Report of the President, February 1996, p. 156.

[4] See Modification of Final Judgment, United States v. Western Electric Co., 552 F.Supp. 131 (D.D.C.) 1982, aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983).

AT&T's divestiture of the Bell Operating Companies, coupled with the MFJ prohibition on BOC entry into manufacturing, created an environment in which all manufacturers have been given the opportunity to compete on the merits for sales to the BOCs and other potential customers. The more open, competitive environment which has emerged under the MFJ has yielded enormous benefits to American consumers, the domestic equipment industry, and the U.S. economy, in the form of lower prices, improved quality, and an ever-expanding array of innovative new products, many of them manufactured by firms which did not even exist at the time the MFJ was entered.

In order to ensure that these benefits are not lost or diminished, the Telecommunications Act of 1996 imposes the following conditions on Bell Operating Company entry into manufacturing: 1) the BOCs may not engage in manufacturing telecommunications equipment or CPE until they have taken certain steps to open their local exchange markets to competition,[5] and have secured the Commission's approval to provide in-region interLATA services pursuant to Section 271(d) of the Act;[6] 2) the BOCs may engage in manufacturing activities only through a

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5 These market-opening requirements are identified in Section 271(c) of the Communications Act, as amended. 47 U.S.C. § 271(c).

6 See 47 U.S.C. § 273(a). The only exceptions to this requirement relate to previously-authorized activities, which are allowed to continue pursuant to Section 271(f), and those activities which the BOCs are specifically authorized to engage in upon enactment, pursuant to Section 273(b).

"separate affiliate" which complies with the structural separation and non-discrimination requirements established in Section 272 of the Act, as well as the regulations established by the Commission in implementing this section;[7] and 3) the BOCs must comply with the additional manufacturing-specific safeguards established in Section 273 of the Act and the Commission's implementing regulations.[8]

A. Scope of Comments [NPRM Section I.B.; Paragraph 11]

TIA believes that effective implementation and vigorous enforcement of **all** of the above-described conditions is essential to the maintenance of the current highly dynamic, vigorously competitive domestic equipment marketplace. As the Commission's Notice of Proposed Rulemaking indicates, the purpose of this proceeding is the establishment of rules to implement the **non-accounting** separate affiliate and non-discrimination requirements of Sections 271 and 272.[9] However, while the Commission's Notice and TIA's responsive comments generally focus on the construction and implementation of Section 272 in particular, TIA urges the Commission to remain cognizant of the interrelationship of the rules to be adopted in this proceeding with the **accounting** safeguards to be established in CC Docket 96-150[10] and the

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7 47 U.S.C. § 272(a)(2)(A).

8 See 47 U.S.C. § 273.

9 NPRM, ¶ 11.

10 See Notice of Proposed Rulemaking, In the Matter of Implementation of the Communications Act of 1996:

manufacturing-specific provisions of Section 273, which remain to be addressed in a separate proceeding.[11] In many respects, the provisions of Section 272 complement and reinforce the safeguard provisions of Section 273. Moreover, in certain areas, the manufacturing-specific provisions of Section 273 may help to inform the Commission's construction and implementation of the Section 272 safeguards, as they relate to BOC manufacturing activities.

B. Need for Safeguards [NPRM Section I.B.; Paragraphs 3, 5-14]

As the Commission's Notice indicates, the Section 272 separate affiliate and non-discrimination safeguards have two primary purposes:

1) "to protect **subscribers** to BOC monopoly services, such as local telephony, against the potential risk of having to pay costs incurred by the BOCs to enter competitive [businesses], such as ... equipment manufacturing"

2) "to protect **competition** in those [competitive] markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage in those new markets the BOCs seek to enter."[12]

Accounting Safeguards Under the Telecommunications Act of 1996, FCC 96-309 (released July 18, 1996). The **accounting** safeguards to be applied to BOC manufacturing activities pursuant to Section 272 and 273 will be established in CC Docket No. 96-150, and will be addressed by TIA in that context.

11 The Commission's Notice indicates that the **manufacturing-specific** safeguards established pursuant to Section 273 will be addressed in yet another proceeding. See NPRM, Paragraph 11, n.29. TIA intends to be an active participant in the Section 273 implementation proceeding as well.

12 NPRM, Paragraph 3. [Emphasis added]

TIA believes that these two objectives are generally complementary and mutually reinforcing in nature. In these comments, TIA urges the Commission to adopt regulations that are carefully crafted to curb the BOCs' ability to give their manufacturing affiliates unfair advantages, through cross-subsidization and various forms of discrimination. Adoption and aggressive enforcement of strong implementing rules is essential in order to preserve the current, vigorously competitive equipment marketplace and the increasingly strong domestic manufacturing industry which has emerged in the post-divestiture environment. Effective implementation and enforcement of the Section 272 safeguards will also serve to protect and advance the interests of business and residential consumers, who will benefit from the price reductions, quality improvements, and increasingly diverse selection of products and vendors which can be expected, if a competitive marketplace is maintained.

In this regard, TIA is encouraged by the Commission's acknowledgment in its Notice that significant risks to competition and consumers will exist even after a BOC has satisfied the market-opening "checklist" requirements of Section 271(d)(3)(A) and the FCC has determined that entry into now-prohibited interLATA and manufacturing markets should be permitted, pursuant to Section 271(d)(3)(C).[13] As the Commission has recognized, "[the BOCs] currently provide an overwhelming

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13 NPRM, Paragraph 7.

share of local exchange and exchange access services" in their respective areas, i.e., "approximately 99.5 percent of the market as measured by revenues."[14] Moreover, as the Notice indicates, where a BOC is regulated under rate-of-return regulation, a price caps structure with sharing (either for interstate or intrastate services), or a price caps scheme with periodic "X-factor" adjustments based on changes in industry productivity, or is entitled to revenues based on costs recorded in regulated books of account, the BOC may seek to "improperly allocate to its regulated core business costs that would be properly attributable to its competitive ventures."[15]

In addition to the clear threat of BOC cross-subsidy, the Commission's Notice recognizes that "[w]ith respect to BOC manufacturing activities, a BOC may have an incentive to purchase only its own equipment, even if such equipment is more expensive or of lower quality than that available from other manufacturers."[16] The Notice also gives appropriate recognition to the BOCs' incentives to favor affiliated manufacturers in

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14 Id. It should also be noted that consummation of the proposed Bell Atlantic-NYNEX and PacTel-SBC mergers will result in the consolidation of several of the industry's largest equipment purchasers, thereby enhancing the merged entities' influence in the equipment marketplace.

15 Id.

16 NPRM, Paragraph 8.

other areas (e.g., standard-setting, access to network-related information) upon their entry into the manufacturing business.[17]

TIA believes that the potential risks of cross-subsidy and discrimination in favor of BOC-affiliated manufacturers in procurement and other areas are real and substantial, given the current, immature state of competition in the BOCs' local exchange markets. As the discussion above indicates, by virtue of their dominant position in local service markets, the BOCs retain the ability to use their enormous purchasing power and control of bottleneck facilities to influence equipment standards and markets in ways designed to favor their affiliates' products.

Accordingly, TIA strongly urges the Commission, in implementing the provisions of Section 272 and other relevant sections of the Act, to make every effort to see that its rules address the full range of risks to competition in the area of manufacturing in an effective, comprehensive manner, and that the statutory requirements and rules adopted by the Commission are vigorously enforced, in order to ensure that the benefits of a fully competitive equipment marketplace are preserved.

II. SCOPE OF THE COMMISSION'S AUTHORITY [NPRM Section II.B.; Paragraph 30]

TIA agrees with the Commission's tentative conclusion that its authority under Section 272 "extends to all BOC manufacturing of telecommunications equipment and CPE."[18] As the

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17 See NPRM, Paragraphs 13, 75, 78.

18 NPRM, Paragraph 30.

Notice indicates, the manufacturing activities addressed by Section 272 "are not within the scope of Section 2(b)"[19] of the Communications Act, which limits the Commission's authority only as to "charges, classifications, practices, services, facilities, or regulation for or in connection with intrastate communications service."[20]

TIA also concurs in the Commission's observation that assuming *arguendo* that Section 2(b) were applicable to BOC manufacturing, such activities "plainly cannot be segregated into interstate and intrastate portions."[21] Accordingly, TIA agrees that any state regulation with respect to BOC manufacturing that is inconsistent with the requirements of Section 272 or the

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19 Id.

20 47 U.S.C. § 152(b).

21 NPRM, Paragraph 30. By its nature, the manufacture of telecommunications equipment or CPE is never solely an intrastate activity. Manufacturers of such products increasingly require access to potential customers throughout the United States and in overseas markets, in order to succeed in a global economy. Moreover, the costs of manufacturing equipment for customers in particular states cannot be segregated, given the use of common facilities and personnel. Finally, even where a manufacturer's product (e.g., an end office switch) is installed for use in the "local loop," such equipment is generally used to complete both interstate and intrastate calls. See e.g., North Carolina Utilities Commission v. FCC, 537 F.2d 787, 791 (4th Cir.), cert. denied, 429 U.S. 1027 (1976) ("NCUC I"); North Carolina Utilities Commission v. FCC, 552 F.2d 1036, 1043 (4th Cir.), cert. denied, 434 U.S. 874 (1977) ("NCUC II"); Computer and Communications Industry Association v. FCC, 693 F.2d 198, 205-206, 215 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

Commission's implementing regulations "would necessarily thwart and impede federal policies, and should be preempted."[22]

III. ACTIVITIES SUBJECT TO SECTION 272 REQUIREMENTS [NPRM Section III; Paragraphs 31-35, 38-39]

A. Definition of Manufacturing [NPRM Paragraph 31]

Pursuant to Section 272(a) of the Communications Act, as amended, BOCs (or BOC affiliates) may engage in "manufacturing" activities, "as defined in Section 273(h)," only through one or more affiliates that are separate from the incumbent LEC entity.[23] As the Commission's Notice observes, Section 273(h) provides that the term "manufacturing" has the same meaning as it had under the AT&T Consent Decree, and therefore "refers not only to the fabrication of telecommunications equipment and CPE, but also to the design and development of equipment."[24]

By referencing the MFJ definition of the term "manufacturing," Section 273(h) establishes a statutory definition that identifies the scope of activities that fall within the separate affiliate requirements and other safeguards established in Section 272, as well as the manufacturing-specific safeguards established in Section 273. As the Notice indicates, the meaning of the term "manufacturing" under the AT&T Consent

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22 NPRM, Paragraph 30.

23 47 U.S.C. § 272(a)(1)-(2)(A).

24 NPRM at Paragraph 31, n. 58, citing United States v. Western Electric Co., 675 F.Supp. 655, 663-64 (D.D.C. 1987).

Decree was first established in the 1987 District Court decision cited by the Commission.[25] TIA believes that, when viewed in light of the Court's decision, Section 273(h) effectively establishes a definition of "manufacturing" that has the following dimensions:

(1) **As the discussion above indicates, under the AT&T Consent Decree, the term "manufacturing" was construed by the courts to encompass "design, development, and fabrication."**

This is particularly important because most of a manufacturer's competitive advantage results from design and development, rather than simple fabrication. As the District Court's 1987 opinion explains:

> A manufacturing restriction that prohibited fabrication but permitted all design and development would not have assuaged the concerns expressed, at the time the decree was entered, by the Department and the Court about cross-subsidization, discriminatory purchasing, and interconnection discrimination. The likelihood of cross-subsidization was greater in the design and development area than in fabrication. The risk of cross-subsidization arose primarily from the existence of joint and common costs that made improper allocation of costs between regulated and unregulated activities difficult to detect. And it would have been more difficult to distinguish equipment research, design and development expenses than to distinguish equipment fabrication from those associated with network activities.
>
> In addition, because it is the designer or developer of that interface that needs information about the network, the concern

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25 The District Court's conclusion that the definition of manufacturing encompasses product design and development, as well as fabrication, subsequently was upheld by the U.S. Court of Appeals (D.C. Circuit). See United States v. Western Electric Company, 894 F. 2d 1387 (D.C. Cir. 1990).

> that discrimination in network changes or in access to information about changes in network standards arose primarily from BOC involvement in designing or developing the manner in which equipment interconnects with the BOC's network, rather than merely specifying generic or functional requirements. For these reasons, the parties and the Court believed that, under the conditions they anticipated would exist at divestiture, if the BOCs were allowed to perform design functions that included designing or developing interface specifications, they could use and gain an anticompetitive advantage from network information not available to their competitors. Merely requiring the BOCs to use independent fabricators to assemble products based on interface specifications designed and developed by the BOCs would not have removed the potential for discrimination on which the equipment restrictions were based.[26]

(2) **The BOCs have been permitted to provide CPE, but the MFJ definition of "manufacturing" bars them from engaging in the design and development of such products.**

The Court's opinion draws this distinction quite clearly, as follows:

> The Court made crystal clear in the explanation of its recommendation that the decree be modified to permit the Regional Companies to provide CPE that the term 'provide' or 'providing' was meant to be synonymous with marketing or selling (as distinguished from designing or developing).[27]

(3) **The BOCs have been permitted to perform network planning and central office engineering, including planning capacity, design, layout, procurement, design recommendations for transmission systems, and installation of central office equipment, but the**

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26 United States v. Western Electric Company, 675 F.Supp at 664-65.

27 Id. at 665-666.

Consent Decree's definition of "manufacturing" prevents them from engaging in design activities related to telecommunications equipment.

As the Court explained:

> The design, maintenance, and operation of the exchange networks constitutes the principal business of the Regional Companies under the decree, and it would be specious to argue that they are prohibited from engaging in this essential facet of that business.
>
> But the performance of such work is a far cry from the design of specific **products** -- a process that takes place **after** generic specifications for the network have been determined and disseminated. It is at that point that an equipment manufacturer designs the telecommunications or CPE products as well as the detailed plans on how to build such products or systems. That design function is an integral part of 'manufacturing,' and as such it is prohibited to the Regional Companies under section II(D)(2).[28]

(4) **"Manufacturing" includes the development of software "integral" to equipment hardware.**

In upholding the District Court's order, the Court of Appeals explained that:

> [O]nce it is determined that the parties intended for Section II(D)(2) to embrace design and development of telecommunications equipment, it takes no additional argument to conclude that software programming essential to design and development of such equipment is prohibited. Indeed, because 'firmware' circuitry has largely supplanted the more cumbersome vacuum tubes, wires and switches that formerly comprised the heart of many pieces of telecommunications equipment, the reading of Section II(D)(2) urged by the DOJ would leave the BOCs free to perform the most significant design and development functions

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28 Id. at 667-668. [Emphasis in original]

> associated with the manufacture of telecommunications products...Permitting the BOCs to engage in the development of such software would thus create the types of anticompetitive risks that Section II(D)(2) was intended to eliminate.
>
> 'Telecommunications equipment' encompasses those pieces of hardware and software essential to the provision of a telecommunications service -- through both the signaling and call paths. For software to be 'integral' to hardware, it must be essential to the operation of the product in providing telecommunications service, i.e., without such software, the product would be incapable of real time call processing. Determinations regarding whether software is 'integral' to hardware can often be made by considering the overall functionality of the product.[29]

(5) **"Manufacturing" does not encompass all forms of telecommunications software.**

In its opinion, the Court of Appeals went on to observe that:

> [T]he Decree does not restrict software development relating to the design and operation of the BOCs' local-exchange networks.[30]

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29 United States v. Western Electric, 894 F. 2d at 1394 (D.C. Cir. 1990). While the above-quoted passage of the Court of Appeals' opinion refers to "telecommunications equipment," the Court elsewhere makes it clear that its use of this term is not limited to equipment of the sort which falls within the 1996 Act's definition, but rather is intended to encompass both of the categories of products included in the MFJ manufacturing prohibition, i.e., "telecommunications products" **and** "customer premises equipment." Id. at 1388, n.1.

30 Id. at 1394.

As the discussion above indicates, under the AT&T Consent Decree, as construed by the courts, the BOCs have been permitted to engage in the development of software that is not "integral" to telecommunications equipment or CPE. In some instances, it may be easy to distinguish between permissible and prohibited software activities, but in others it may not. Accordingly, TIA urges the Commission to consider using its authority under Section 273(g)[31] to require that all software activities undertaken by a BOC and its affiliates, including Bellcore, be conducted through a separate affiliate, in accordance with the requirements of Section 272.

B. Use of Single Separate Affiliate [NPRM Section III; Paragraph 33]

As the Commission's Notice indicates, Section 272(a)(1) requires the BOCs to conduct activities subject to the separate affiliate requirement through "one or more affiliates." TIA agrees with the Commission's tentative conclusion that "a BOC may conduct all, or some combination, of its manufacturing activities, interLATA telecommunications services, and interLATA information services in a single separate affiliate, so long as all the requirements imposed pursuant to the statute and our regulations are otherwise met."[32] As the Commission has observed, the legislative history of the 1996 Act suggests that Congress intended to permit the consolidation of activities

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31 47 U.S.C. § 273(g).

32 NPRM, Paragraph 33.

subject to Section 272 in a single separate affiliate.[33] Provided that all obligations under Sections 272 and 273, as well as the Commission's implementing rules are met, TIA does not oppose the use of a single entity.

C. Previously-Authorized Activities [NPRM Section III; Paragraphs 34, 39]

Section 272(h) provides that "[w]ith respect to any activity in which a Bell operating company is engaged on the date of enactment," the BOC shall have 1 year from enactment to comply with the requirements of Section 272.[34] TIA believes that Section 272(h) clearly applies with respect to all activities identified in Section 272(a)(2) as subject to the separate affiliate requirements of Section 272, including BOC manufacturing activities.

TIA does not believe that the provisions of Section 271(f) preclude the application of Section 272 to any previously-authorized manufacturing activities that a BOC was engaged in at the time of enactment. This section merely prevents Sections 271 and 273 from "prohibiting" a BOC from continuing to engage in activities in which it was authorized to engage at the time of enactment.[35] When read in conjunction with the relevant provisions of Section 272, it is clear that Section 271(f) does not prevent application of the safeguards provided for in Section 272 to previously-authorized activities, at the end of the one-

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[33] Id., n.64. [cites omitted]

year transition period provided in Section 272(h). Indeed, such application is specifically mandated by Section 272(a)(2)(A).

In considering the applicability of Section 272(h) and 271(f) to previously-authorized manufacturing activities, it is important to note that Section 272(a)(2)(A) expressly **requires** the BOCs to engage in **"manufacturing activities,"** without limitation, in accordance with the requirements of Section 272. In contrast, Section 272(a)(2)(B) contains an express **exemption** from these requirements for previously-authorized activities involving the **origination of interLATA telecommunications services**.[36] The language of the statute thus makes it clear that **all** manufacturing activities ultimately must conform to the requirements of Section 272.

Section 272(h) provides for a one-year transition period to enable a BOC to bring manufacturing activities it was authorized to undertake pursuant to MFJ waivers into conformity with Section 272. This transition period was included in order to give the Commission sufficient time to promulgate its Section 272 rules and to give the BOCs time to make the necessary adjustments to conform to the new rules. To construe

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34 47 U.S.C. § 272(h).

35 Section 271(f) states that neither Section 271(a) nor Section 273 shall "prohibit a [BOC] from engaging, at any time after the date of enactment . . . in any activity to the extent authorized by, and subject to the terms and conditions contained in" an order of the MFJ Court. 47 U.S.C. § 271(f).

36 NPRM, Paragraphs 38-39.

Section 271(f) as creating an implicit, permanent exemption for previously-authorized **manufacturing** activities, notwithstanding the **absence** of an explicit exemption of the sort explicitly included in Section 272(a)(2)(B)(iii) **for previously-authorized interLATA activities only**, would render Section 272(h) a nullity. Such a result would be contrary to the most fundamental principle of statutory construction, i.e., that "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error."[37] Accordingly, in the absence of an explicit exemption for previously-authorized manufacturing activities, the requirements of Section 272 clearly must be deemed applicable to such activities, following the end of the one-year transition period established in Section 272(h).

IV. STRUCTURAL SEPARATION REQUIREMENTS [NPRM Section IV; Paragraphs 55-64]

As the Commission's Notice observes, Section 272(b) establishes five structural and transactional requirements for BOC separate affiliates established pursuant to Section 272(a).[38] In these comments, TIA addresses the proper application of four

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37 Sutherland Statutory Construction, § 46.06 (5th ed. 1992); see also NPRM, Paragraph 57, applying this rule in construing Section 272(b)(1).

38 NPRM, Paragraph 55.